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January 11, 2001

VIA MESSENGER

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

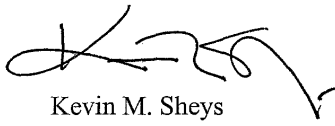
Re: STB EX PARTE No. 582 (Sub-No. 1) Major Rail Consolidation
Procedures

Dear Secretary Williams:

Enclosed you will find an original and 25 copies of the **Rebuttal Comments of New Jersey Transit Corporation on Notice of Proposed Rulemaking**. Also enclosed is a 3.5-inch diskette containing the filing in WordPerfect 5.1.

Please feel free to contact me should any questions arise regarding this filing.

Respectfully submitted,

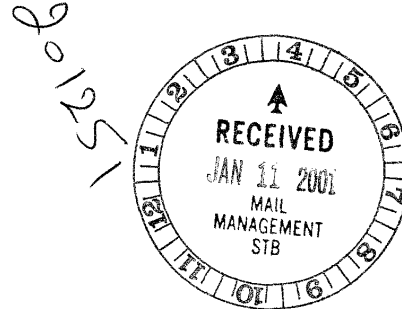


Kevin M. Sheys
Attorney for New Jersey Transit Corporation

KMS:mfn

Enclosures

cc: All Parties of Record



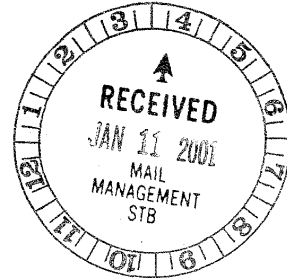
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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 582
(SUB-NO. 1)



MAJOR RAIL CONSOLIDATION PROCEDURES

REBUTTAL COMMENTS OF NEW JERSEY TRANSIT CORPORATION

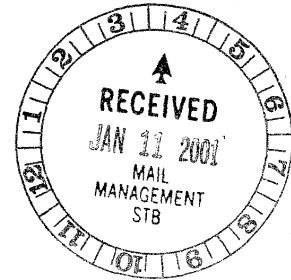
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Counsel for New Jersey Transit Corporation

Dated: January 11, 2001

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 582
(SUB-NO. 1)



MAJOR RAIL CONSOLIDATION PROCEDURES

REBUTTAL COMMENTS OF NEW JERSEY TRANSIT CORPORATION

New Jersey Transit Corporation ("NJ Transit") submits the following Rebuttal Comments on the Surface Transportation Board's ("Board" or "STB") proposed modifications to its regulations at 49 CFR Part 1180, governing proposals for major rail consolidations. STB Ex Parte No. 582 (Sub-No. 1), Major Rail Consolidation Procedures, served October 3, 2000 (the "NPRM").

I. Proposed Section 1180.1(a)

NJ Transit proposed changes in the Board's draft language for Section 1180.1(a) to reflect the fact that consolidation of two Class I railroads would impact passenger rail services and operations. Comments of New Jersey Transit Corporation ("NJ Transit Comments") at 4-5. CSX Transportation, Inc. ("CSXT") opposes the proposed changes because "the freight transportation network should be kept separate for purposes of merger analysis from the passenger transportation network." Reply Comments of CSX Corporation and CSX Transportation, Inc. ("CSXT Reply") at 70.

In reality, the freight transportation network and the passenger transportation network are not separate. They are inextricably linked. For example, NJ Transit owns 341 route miles of rail line of which 300 route miles are shared with freight rail carriers. NJ Transit's commuter rail

operating subsidiary, New Jersey Transit Rail Operations, Inc. ("NJTRO"), dispatches over 408 route miles of rail line of which 366 route miles are shared with rail freight carriers.

Other than the plainly incorrect assertion that the freight and passenger networks are somehow separate, CSXT provides no support for its opposition to NJ Transit's proposed change in the language of Section 1180.1(a). CSXT is (to the best knowledge of NJ Transit) alone in its objection to the change proposed by NJ Transit. Norfolk Southern Railway Company ("NS") expresses no objection to NJ Transit's proposed language and acknowledges that the Board's proposed merger rules "properly require examination of a proposed rail consolidation's effects on rail passenger operations." Reply Comments of Norfolk Southern ("NS Reply") at 50. Union Pacific Railroad Company ("UPRR"), Burlington Northern and Santa Fe Railway Company ("BNSF") and the Association of American Railroads ("AAR") express no objection to NJ Transit's proposed language for Section 1180.1(a) and all three acknowledge that the Board should consider a merger's impact on existing passenger service. Union Pacific's Reply Comments ("UPRR Reply") at 29- 30 ("If the merger will reduce the quality of rail passenger service, that harm should be weighed in the balance against the merger."); Reply Comments of the Burlington Northern and Santa Fe Railway Company ("BNSF Reply") at 37; Reply Comments of the Association of American Railroads ("AAR Reply") at 17.

NJ Transit's proposed changes to the language of Section 1180.1(a) should be adopted since they are consistent with the Board's recognition that mergers affect all aspects of the transportation network.

II. Proposed Section 1180.10(b)

NJ Transit (and others) proposed that Section 1180.10(b) be revised to require merger applicants to describe how they will coordinate post-merger freight operations on lines owned by passenger rail operators. NJ Transit Comments at 9. CSXT objects to this proposal, asserting that it would be burdensome and that passenger railroads can protect their interests in contracts. CSXT Reply at 74. As noted above, the freight and passenger rail networks are intertwined and any service assurance plan rule that did not require merging railroads to describe how they would coordinate post-merger freight operations on passenger lines would be incomplete.¹ Moreover, requiring merging railroads to describe how they will coordinate operations on passenger-owned lines would not be burdensome. CSX and NS described their post-consolidation operations on NJ Transit's rail lines in the Conrail case in their operating plans. STB Finance Docket No. 33388, Application Vol. 3A at 175, 177; Application Vol. 3B at 234-36, 459, 471; Supplemental Vol. 3, Shared Assets Area Operating Plans, at 125-29.

Norfolk Southern objects to all proposed requirements to include passenger rail operators in preliminary analysis of proposed mergers, arguing that such requirements are "protectionist in nature." NS Reply at 51. NJ Transit cannot see how requiring complete and realistic service assurance plans could be harmful or unfair. To the extent that the requirement would make the service assurance plan a realistic and useful document for "protecting" existing commuter rail operations, NJ Transit submits that this is one of the purposes of such plans. In addition, there is

¹ Although the communications protocol in the second sentence of proposed Section 1180.10(b) is important, it is not the only critical component of a service assurance plan.

no support for the proposition that requiring complete service assurance plans would somehow allow commuter railroads to enhance their existing contractual operating rights.

Union Pacific agrees that the Board should require merger applicants to meet with passenger operators before completing service plans. UP believes that “[p]rior consultation should help applicants develop operating plans that accommodate existing passenger operations.” UP Reply at 28.

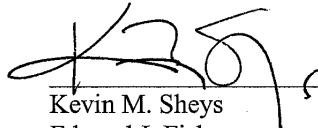
NJ Transit’s proposal with respect to additional language for Section 1180.10(b) is realistic and sound and should be adopted by the Board.

III. Protecting Existing Contractual Rights

CSXT and NS assert that some of the proposals made by rail passenger agencies (including NJ Transit) are designed, in the context of a rail merger, to enhance their contractual rights. CSXT Reply at 68-69; NS Reply at 50-51. None of the proposed changes offered by NJ Transit are based upon the assertion that the Board should enhance NJ Transit’s contractual rights as a condition of approval of a merger. The Board has the authority to modify contractual rights of parties to mitigate harms in the context of a merger. CSXT and NS are well aware of this fact, having spent a great deal of energy arguing the point in the context of its sweeping call for abrogation of anti-assignment clauses in the Conrail case. CSXT and NS mischaracterize NJ Transit’s proposals with respect to the language of the merger rules. NJ Transit merely proposes

that the Board's rules take into account the importance of commuter rail operations to the singular transportation network.

Respectfully submitted,



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